REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-14 are currently pending. Claims 1, 6 and 11-14 are independent and are hereby amended. No new matter has been introduced. Support for this amendment is provided throughout the Specification as originally filed.

Changes to the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. REJECTIONS UNDER 35 U.S.C. §101

Claims 13 and 14 have been amended to overcome the §101 rejections.

Applicant respectfully requests withdrawal of the §101 rejection of claims 13 and 14.

III. REJECTIONS UNDER 35 U.S.C. §102

Claims 1-8 and 10-14 were rejected under 35 U.S.C. §102 as allegedly anticipated by U.S. Patent No. 5,604,646 to Yamawaki.

In view of the amendments herein, Applicants respectfully traverse this rejection.

CLAIM 1

Independent claim 1, as amended, is representative and recites, *inter alia*:

"wherein the error correction means substitutes recognizable dummy data for said playback data output to said later-stage processing when said error correction means detects a bit error difficult to correct." (emphasis added)

As understood by the Applicants, Yamawaki discloses, in relevant part, a data error correcting method for a disk accessing apparatus that transfers target data that follows a sync pattern to a speed matching buffer. The target data is transferred to a buffer memory and subjected to an error correction operation. When detection of a sync pattern is unsuccessful, dummy data is supplied directly to the buffer memory in place of the undetected target data. Abstract. The dummy data is then subjected to the error correction operation. Col. 5, lines 19-24. Thus, in Yamawaki, the dummy data is subjected to an error correction operation.

In contrast, claim 1 recites, "the error correction means substitutes recognizable dummy data for said playback data output to said later-stage processing when said error correction means detects a bit error difficult to correct." That is, in the present application, a data error is detected by the error correction means, which then substitutes dummy data for later processing.

First, the dummy data is not subjected to the error correction operation as in Yamawaki. The error correction means of the present application supplies the dummy data to later-stage operations (not to the error correction means).

Second, it is the error correction means (13) of the present application that detects the need for the dummy data whereas in Yamawaki it is the unsuccessful reading of the sync signal by the disk interface (13) that causes substitution of dummy data, which is provided to the error correction unit (15).

Thus, claim 1 is patentable over Yamawaki because the reference does not disclose each and every limitation recited in the claim. In particular, Yamawaki does not disclose, "the error correction means substitutes recognizable dummy data for said playback data output to said later-stage processing when said error correction means detects a bit error difficult to correct" as recited in claim 1.

For reasons similar or somewhat similar to those described above with regard to independent claim 1, independent claims 11 and 13 are also believed to be patentable.

CLAIM 6

Independent claim 6, as amended, is representative and recites, *inter alia*:

> "wherein recognizable dummy substituted for said playback data recorded in a defective sector of said disc recording medium is output to said later-stage processing as a result of an access to said defective sector." (emphasis added).

As discussed above, Yamawaki discloses that dummy data is provided when the disk interface (13) is unsuccessful in detecting a sync pattern on the disk. When the sync pattern is not detected, Yamawaki can not identify the target data. That is, in Yamawaki it is the failure to detect a sync pattern that causes substitution of dummy data in the buffer.

In contrast, claim 6 recites, "dummy substituted for said playback data recorded in a defective sector of said disc recording medium is output to said later-stage processing as a result of an access to said defective sector." That is, in the present application the disk has a defective sector. Dummy data is substituted for the data in the defective sector. This is distinguishable from Yamawaki wherein the disk interface merely fails to detect the sync pattern that alerts the

system that target follows. There is no suggestion in Yamawaki that the disk sector itself is defective as in the present application.

Thus, claim 6 is patentable over Yamawaki because the reference does not disclose each and every limitation recited in the claim. In particular, Yamawaki does not disclose, "dummy substituted for said playback data recorded in a defective sector of said disc recording medium is output to said later-stage processing as a result of an access to said defective sector" as recited in claim 6.

For reasons similar or somewhat similar to those described above with regard to independent claim 6, independent claims 12 and 14 are also believed to be patentable.

IV. REJECTIONS UNDER 35 U.S.C. §103(a)

Claim 9 was rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Yamawaki and Official Notice.

Applicant respectfully traverses this rejection.

First, claim 9 depends from independent claim 6 and should be allowable for at least the reasons discussed herein above.

Second, challenge the factual assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge.

From the MPEP 2144.03(E): "Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the

examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. *See, for example, In re Zurko*, 258 F.3d 1379, 1386; *In re Ahlert*, 424 F.2d 1088, 1092."

Further, "[a]s noted by the court in In re Ahlert, 424 F.2d 1088, 1091 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute.' (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))." MPEP 2144.03.

Claim 9 recites, *inter alia*:

> ". . . said limitation requested by said later-stage processing is a request for a transfer of data in a predetermined order within a predetermined time and said request is made by an external apparatus in a command specifying an operation to play back said data." (emphasis added).

The Office Action asserts at page 10, last paragraph, ". . . commands to play data from a medium from an external device, such as a remote control, are notoriously well known . . . providing a user with a means to direct his equipment to play at a time desired by the user."

However, the Office Action fails to address the above highlighted element recited in the claim. That is, the Office Action does not address the element, "said limitation requested by said later-stage processing is a request for a transfer of data in a predetermined order within a predetermined time."

Applicant contends that this is a mere conclusory statement and an impermissible reliance on Official Notice. Claim 9 recites more than an "external apparatus." Claim 9 also recites, "said limitation requested by said later-stage processing is a request for a transfer of data in a

predetermined order within a predetermined time." The Applicants contend this is not of notorious character nor insubstantial, as asserted in the Office Action. Certainly, the features recited in claim 9 are not capable of "instant and unquestionable demonstration as to defy dispute." These features are neither "basic knowledge" nor "common sense." In re Lee, 277 F.3d 1338, 1345 (Fed. Cir. 2002) ("Deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'"). Applicants contend that claim 9 recites a substantive feature that can not be overcome with Official Notice.

Thus, in accordance with MPEP 2144.03(D) and so that the record of prosecution be complete, Applicants respectfully request documentary evidence under 37 C.F.R. 104(c)(2) of the elements recited in claim 9, or an affidavit of the Examiner under 37 C.F.R. 104(d)(2) setting forth specific factual statements and explanation to support the facts asserted.

V. DEPENDENT CLAIMS

The other claims are dependent from one of the claims discussed above and are therefore believed patentable for at least the same reasons. Because each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION

Claims 1-14 are in condition for allowance. In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, or references,

it is respectfully requested that the Examiner specifically indicate those portions of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: _____
Paul A. Levy
Reg. No. 45,748
(212) 588-0800